Lewis v Narayanasamy (t/a Dotcom Solicitors) and another [2017] EWCA Civ 229

Narayanasamy was the sole principal of Dotcom Solicitors. Lewis worked in the firm for a number of years, but after Narayanasamy terminated his contract the parties disputed the nature of their relationship and Lewis's money claims against the firm. The trial judge accepted Lewis's case that the relationship was one of employment, not partnership. On appeal, the Court of Appeal upheld that ruling.

The Court of Appeal noted that the fact that the evidence of a witnesses, such as Lewis, was unsatisfactory about one aspect of the case, did not mean that his evidence should be so viewed as regards all other aspects and that Narayanasamy's even more unsatisfactory evidence should be preferred. The judge was entitled to find that Lewis's self-employment notification, was irrelevant to the nature of his initial relationship with the firm because it postdated the start of his involvement with the firm, and that it did not evidence a change in the nature of the relationship when taken in the light of all the circumstances. The judge had correctly accepted that there was material suggesting that Lewis was a true partner, including the form of the accounts, but had equally correctly ruled that the labels used by the parties, including in the accounts, were not decisive. Section 2(2) of the Partnership Act 1890 provided that the sharing of gross returns did not of itself create a partnership and therefore the judge's finding that Lewis was entitled to a 10% share of gross turnover was not decisive that there was a partnership. The fact that Lewis had no financial or management control in running the firm pointed towards the relationship being one of employment rather than partnership. The judge had been correct to take into account the fact that although Lewis was required to make a capital contribution of £30,000, it was refundable on the termination of the agreement, and there was no indication that he was to share in the firm's losses or its assets. The unreliability of the parties' evidence as to what they intended justified the judge's decision to look at the substantive terms of their arrangement and consider which factors were indicative of employment and which indicative of partnership, but the fact that neither party claimed to be a true partner of the other or that he had intended to be supported by the judge's conclusion that the relationship was one of employment.

The Court of Appeal dismissed the claim that Lewis's work permit had become invalid, and that this was sufficient to render the contractual arrangement with Narayanasamy illegal and unenforceable, because it had not been sufficiently articulated.

Finally, Court of Appeal rejected the argument that payment of the £30,000 capital contribution was a condition precedent to Lewis's right to the 10% share and that since there was no offsetting agreement, the payment of £16,000 by Lewis did not allow him to claim the 10% share. It had not been raised at trial, and although it had been raised before the order had been drawn up and the judge had addressed it, he had only found that there was no express agreement to offset, had concluded that in any event it was a separate obligation, and had noted that the logic of the claim would have made it a condition precedent to the payment of salary as well as the 10%, which had not been argued.

***Goldup and another v Cobb* [2017] EWHC 526 (Ch)**

The first claimant and the defendant were in partnership together from 1998 to 2004, and both claimants were in partnership with the defendant from 2004 to 2014. Throughout the two partnerships the defendant held the post of coroner. The claimants alleged that the pension entitlement acquired by the defendant by reason of her position as coroner was a partnership asset, and that they were entitled to share of the value of the pension in accordance with their partnership shares. The defendant claimed that the pension was not a personal entitlement and was never a partnership asset.

Although the defendant accepted that it was possible in principle for a pension entitlement to be a partnership asset, she argued that it was unlikely for a number of reasons: the entitlement was unalienable; it would be difficult to value, not least because it existed before the partnerships were formed and was not valued at that time; and it was for the defendant to elect when to take the pension payments. However, the court held that although all of these facts were relevant to the legal status of the pension entitlement, none made it impossible for it to be a partnership asset: the court was accustomed to difficult valuations, and in the analogous case of *Patel v Jones* [2001] EWCA Civ 779 it had been held the fact that a pension was not payable to a bankrupt until after his bankruptcy was irrelevant to the existence and vesting of the right.

The claimants argued that the partnership was entitled to the gross coronial income out of which the payments for the pension were made. They cited both ss20-21 of the Partnership Act 1890, which attempted to define partnership property, and s29 which required every partner to account for any benefit received by him from any transaction concerning the partnership or any use by him of the partnership property or connection. The court held that although it was clear from s29 and *Helmore v Smith* (1886) 35 Ch 435 that if payments towards the pension were made out of partnership funds, the pension would be a partnership asset, the issue remained whether the payments were made out of partnership funds. Similarly, although *Thompson's Trustee in Bankruptcy v Heaton* [1974] 1 WLR 605 confirmed that partners owed a fiduciary duty when dealing with partnership property, this principle only governed dealings with the partnership property and did not determine whether particular assets were indeed partnership property. More relevant was *Don King v Warren* [2000] Ch 291, in which it was held that partnership property within s20 included property to which a partner was entitled and which all partners, expressly or impliedly, agreed should be treated as partnership property.

The court found as a fact that there was no express agreement to include or exclude the defendant's pension as a partnership asset. It accepted the defendant's evidence that she had told the first claimant that it was the net payment that was to go into the partnership and that she did not intend the pension to be a partnership asset, although it noted that that the first claimant might not have understood that this was what she meant.

There court also held that there was also no implied agreement: the claimants did not argue that there was; it was clear that the defendant would not have agreed to such a term; and the fact that it was apparent to the claimants that the defendant thought the pension was hers, and would have objected to being deprived of it, was the reason that the first claimant did not raise the issue with the defendant for some time after he had received counsel's opinion that it was a partnership asset.

Finally, the court held that there was no rule of law that in the absence of an agreement, the pension was automatically a partnership asset. The cases referred to above indicated that it depended on the facts of the case, as did those of *Casson Beckman v Papi* [1991] BCC 68, *Smith v Mules* (1852) 9 Hare 556 and *Collins v Jackson* (1862) 32 Beav 645 on the fees received by partners who held public office. Here, the defendant already had a right to the pension before the partnership was formed; the payments for the pension were deducted at source; the partnership received the supplementary pay which recompensed for the pension contribution; the defendant had shown the first claimant a payslip and told him that the net payment was to go into the partnership account; there was no claim to a share of the state pension, even though National Insurance payments were deducted in the same way from the defendant's gross pay; no payment was made by either of the claimants to buy into the partnership; the defendant was not appointed coroner as a result of her being a partner, although she did use the office facilities of the partnership which were only partially reimbursed by the county council's contribution to the office expenses of the coroner; and the first claimant knew that the defendant would not have accepted that the pension was a partnership asset, and allowed her to reduce her share of the partnership without informing her that he had counsel's opinion that her pension was a partnership asset and therefore she was giving away a share of her pension.

***Samarkand Film Partnership No 3 and others v Commissioners for HMRC* [2017] EWCA Civ 77**

The appellants were two partnerships and their partners. Each partnership had bought and leased out a film to a third party, which then licensed the film back to the seller. The partners were to be repaid their investments plus interest over a period of 15 years, from rental payments by the third party. The schemes were marketed to wealthy individuals who wished to generate substantial first year losses to set again their taxable income. HMRC refused to grant the loss reliefs on the ground that the partnerships were not trading, as required by s134 and other sections of the Income Tax (Trading and Other Income Act 2005) (ITTOIA), and any trade was not carried on a commercial basis with a view to the realisation of profits in the trade, as required by s381 of the Income and Corporation Taxes Act 1988 (ICTA).

The Court of Appeal agreed with the First Tier Tribunal and the Upper Tribunal that no trade had been carried on. The relevant legal principles had been set out in the *Eclipse Film Partners No 35 LLP v Commissioners of HMRC* [2015] EWCA Civ 95, [2015] STC 1429 (noted in A Propos Partnership Vol 43, December 2015). It was necessary to look at the whole picture and consider whether what the taxpayer actually did constituted a trade. A single purchase and leasing of an asset could be trade, as could the purchase of a film with a view to its distribution or exploitation, or a single leasing. However, the lease and acquisition here were one transaction whose material features were the payment of a lump sum in return for a series of fixed payments, and this transaction was not a venture in the nature of a trade.

There was no challenge to the First Tier Tribunal's ruling that the profits test was satisfied because the gross receipts from the leases would exceed the initial outlay on the purchase of the film over the 15 year term in the leases, and the word 'profit' in the legislation was intended to refer to the excess of income over expenditure on a simply arithmetical basis. However, although the Court of Appeal accepted that the profitability and commerciality tests overlapped, it agreed with both tribunals that the commerciality test was not satisfied because a trade involving transactions that were intended to produce a loss in net present value terms, with no compensating collateral benefit, was not conducted on a commercial basis.

Interestingly, the Court of Appeal raised the question, but found it unnecessary to provide the answer, as to whether the test of partnership in s1 of the Partnership Act 1890 ('the relation which subsists between persons carrying on a business in common with a view of profit') would be satisfied where two or more persons merely set up the partnership and carried on a business in common with a view of profit not for themselves but for future new partners who would for all practical purposes replace them.

***Bhayani and another v Taylor Bracewell LLP* [2016] EWHC 3360 (IPEC)**

The first claimant, Bhayani, was a solicitor who joined the defendant LLP as both an employee and a salaried member. They agreed that part of the LLP's business would be carried on under the name 'Bhayani Bracewell', and the LLP registered a trademark for this name in stylised form. Bhayani subsequently left the LLP and objected to the LLP continuing to offer services relating to employment law under the Bhayani Bracewell name. She and the company she subsequently set up (the second claimant) alleged that use of the name falsely represented that she was still involved in the LLP and that the LLP had thus passed off its services as being hers. The LLP applied for summary judgment, which the court granted.

First, the court rejected Bhayani's claim for passing off because she did not own goodwill to found such a claim. Although she had acquired a significant reputation as an employment lawyer prior to joining the LLP, it was agreed that reputation, which existed by itself and attached to the individual, could not found such an action. The issue was therefore whether she also acquired goodwill during her previous career. Goodwill could found an action, but it not exist independently and was indivisible from the business with which it was associated (*Star Industrial Co Ltd v Yap Kwee Kor* [1976] FSR 256, recently endorsed by the Supreme Court in *Starbucks (HK) Ltd v British Sky Broadcasting Group plc* [2015] UKSC 31, [2015] FSR 29). In general, goodwill generated by an employee belonged to the employer (*Asprey & Garrard v WRA (Guns)* [2002] FSR 31 and *Kingston, Miller & Co Ltd v Thomas Kingston & Co Ltd* (1912) 29 RPC 289) and goodwill generated by a partner belonged to the partnership (*Leather Cloth Co v American Leather Cloth Co* [1865] 11 HLC 523), although this general rule did not apply to goodwill generated by acts done outside duties to the employer or partnership (*Irvine v Talksport Ltd* [2002] EWHC 367, [2002] FSR 60).

Here, the professional acts carried out by Bhayani by which she had earned her reputation were carried out either in the course of the LLP's business or that of her previous firm. As there were no exceptional circumstances to displace the general rule, the goodwill vested in the LLP and the previous firm. The court considered that the public was well aware that a solicitor, whether employed or an equity partner/LLP member, was not a free agent but was assisted and constrained by the terms of employment or the partnership/LLP agreement and by advice and pressure from colleagues. Ultimately the quality of an individual's services was guaranteed by the firm, from whom any compensation would come; and the goodwill generated by those services provided by the individual qua solicitor vested in the firm. The court noted, however, that if a solicitor moved from one firm to another and the first firm represented that she was still employed by them or remained a partner, the goodwill associated with her and now vested in the new firm could provide a cause of action or, alternatively, there might be an action for injurious falsehood.

Second, the court further rejected Bhayani's claim for passing off because the LLP agreement did not entitle her to use the Bhayani Bracewell trading name. It provided that intellectual property in and about the LLP's property and used for the purposes of the LLP was the property of the LLP, and that no LLP member could derive any benefit from the use of the LLP's names or property. The court held that although the definition in the LLP agreement of intellectual property did not expressly refer to goodwill, it was wide enough to encompass it. Although the provision in the agreement generally prohibiting an outgoing member from using the same or a similar name to that used by the LLP expressly permitted the use of a name containing the member's name, this did not assist Bhayani's claim for passing off because she never owned the goodwill which she generated while working for her previous firm or the LLP.

***Planetree Nominees Ltd and Lorrimer v Howard Kennedy LLP* [2016] EWHC 2302 (Ch)**

The claimants issued a claim form against the defendant firm of solicitors, which had been a partnership at the time the cause of action arose but which subsequently dissolved and became an LLP. The letter of claim was sent to the LLP and asserted a claim against it. The LLP pointed out that the correct defendant was the partnership, and the parties entered into a standstill agreement which was subject to termination by notice. The clause in the agreement which stated that notice to the LLP was to be given at No 1 London Bridge stated that the clause did not apply to the service of proceedings.

The court noted that the LLP was the successor practice to the partnership, and that the insurance was that of the LLP on the date of notification of the claim. CPR PD 7A provided that a claim against the partnership must be brought against the name under which it carried on business at the time the cause of action accrued, and that a party was entitled to request a partnership membership statement giving the identity of the partners at that time. CPR 6.9 required an individual being sued in the business name of the partnership to be served at his usual or last known residence, or the principal or last known place of business of the partnership, and provided that where the claimant had reason to believe that the defendant no longer resided or carried on business there, it must take reasonable steps to ascertain the current address.

The court held that the claim form had not been properly served in accordance with CPR 6.9. It considered that it was not clear that it was possible for a dissolved partnership to have a current place of business, particularly where the business had been transferred (here, to the LLP). Even if it was possible, there was insufficient evidence that its current place of business was No 1 London Bridge, not least because the standstill agreement clearly stated that proceedings could not be served there. The court also considered that reasonable steps to ascertain an alternative address had not been undertaken before the claim form was served. In particular, no membership statement had been requested. There had therefore been no service in accordance with CPR 6.9.

The court noted that the principles relevant to CPR 6.15, which enabled the court to order that steps taken to bring the claim form to the defendant's attention by an alternative method or at an alternative place constituted good service, had been summarised in *Barton v Wright Hassall LLP* [2016] CP REP 29. It was particularly relevant that the defendant had become aware of the claim form, the partners at the time the cause of action arose having become aware of it by virtue of it having been sent to the LLP. However, the reason why the claim form could not be served within its period of validity was also relevant. The claimants had made no attempt to follow up the failure of the defendant's solicitors to respond to an enquiry as to whether they were authorised to accept service, and the court considered this fatal to their claim under CPR 6.15.

The court therefore granted the defendant's request for a declaration that service had not taken place.

Hosking v Marathon Asset Management LLP

The claimant had set up an investment management partnership. It was taken over by the defendant, at which time it became an LLP and the claimant became a member of the LLP. After the defendant gave notice of retirement, the defendant commenced arbitration proceedings against him. The arbitrator found that the claimant had breached his contractual and fiduciary duties to the defendant by discussing with four of its employees the possibility of starting a new business, and producing a business plan. The arbitrator concluded that the defendant had thereby lost a real or substantial chance of retaining three key employees, and that the claimant should therefore forfeit 50% of the sums paid to him during the period of his breaches of duty. The claimant sought and obtained permission to appeal from the arbitration award under s69 of the Arbitration Act 1996.

The court noted that the law relating to forfeiture of a fiduciary's remuneration allowed his fees to be forfeited in the event of his taking a secret profit which was directly related to the performance of his duties, but not if the breach of trust did not relate to the whole of the relationship and where forfeiture would be disproportionate. As explained in *Imageview Management Ltd v Jack* [2009] EWCA Civ 63, [2009] Bus LR 1034, the underlying policy for forfeiture was to deter breaches of trust, since damages alone would not provide sufficient deterrence.

The court held that the profit share of a partner or LLP member could potentially be subject to forfeiture on the basis of breach of fiduciary duty. Although the forfeiture principle had generally been invoked in relation to agents, the underlying rationale applied more widely and had been applied to other fiduciaries. In any event, a partner or LLP member was an agent and the mere fact that they were also a partner or an LLP member should not preclude the application of the principle. There was no reason to treat a profit share differently from other forms of remuneration, even though it usually reflected the interest of the partner or member in the firm, rather than being a payment for specific services. Although neither the legislation nor the caselaw on partnerships and LLPs made provision for forfeiture, the legislation did not attempt to provide an exhaustive account of the law and remained subject to the general law, and the cases did not directly address the point at issue. Finally, the fact that the firm's contractual documentation contained no provision for forfeiture did not mean that there was no scope for it to apply. The court therefore dismissed the claimant's appeal.

***Wong Yau Lam and Sau Yau Lam t/a Sunlight Takeaway Meals v Commissioners for HMRC* [2016] UKFTT 0659 (TC)**

The appellants appealed against a closure noticed issued by HMRC which increased the partnership profit figure on the basis that sales had been omitted.

The tribunal held, first, that the closure notice satisfied the requirements of s28B of the Taxes Management Act 1970 and was valid. Although s28B(4) obliged HMRC to amend each partner's return, a closure notice could be valid without such amendments having been made. Section 28B(1) and (2) set out the requirements for a closure notice, and s28B(3) provided that it took effect when issued. There was nothing to suggest that the validity of a closure notice was subject to compliance with s28B(4). Indeed it was only when the closure notice and thus the amendment thereby made to the partnership return took effect that there was any basis for amendments to be made to the individual returns to reflect the amendment to the partnership return.

The tribunal held, second, that the amendment made by the closure notice was only partly justified. Although HMRC was not entitled to rely on the presumption of continuity by using the base year as 2007-2008 when in fact its investigation had focussed on 2006-2007, that did not affect its findings as to 2006-2007. However, the accounts and the accountants' working papers demonstrated that HMRC's assumption that the returned profits reflected nothing for cash taken out of the business was incorrect, and therefore the figures added for assumed cash spend and bank deposits in London could not be justified in their entirety, although there was insufficient evidence to make a similar finding in relation to bank deposits in Hong Kong. The Tribunal therefore allowed the appeal in part by reducing the partnership profit stated in the closure notice.

***Ham v Bell, Turner and Ham* [2016] EWHC 1791 (Ch)**

An earlier decision in these proceedings was reported in A Propos Partnership, Issue 40, May 2014. They involved a family farming business which was carried on by a partnership between the parents from 1967 to 1997, and by a partnership carried on between them and their son. The son alleged that the farm, comprising the farmhouse, buildings and land, which had been an asset of the old partnership, had become an asset of the new partnership. The parents alleged that it had not.

The court held, first, that the accounts of the new partnership from 1998 to 2003, which included the farm, were merely evidence and must be disregarded if they did not reflect what had been agreed. In *Miles v Clarke* [1953] 1 WLR 537 it was held that property owned by one or more partner would only be treated as brought into the partnership stock, and thus as partnership property as defined in s20 of the Partnership Act, if this was expressly or impliedly agreed by the partners, and that no more agreement should be inferred than what was absolutely necessary to give business efficacy to what had had happened. On the facts here, it was not necessary to imply that the farm on which crops grew or animals were grazed was a partnership asset, and indeed it was common for farming partnerships to farm land owned by one or more partners without the land becoming a partnership asset. Although a statement of assets brought into the partnership by the partners, which was referred in the partnership agreement, had never been drawn up, there was no evidence that this was because the accounts were deemed to be substituted for it. In any event, the appearance of the value of an asset in the accounts did not necessarily signify an agreement that it was partnership property.

The court further held that even if it was wrong in concluding that there was, objectively viewed, no agreement that the farm should become a partnership asset, the son knew that his parents never intended to make the fam a partnership asset. The provisions of their wills made it clear that they did not regard the farm as an asset of the partnership, and in 2004 the accounts and the notes to the financial statements contained a correction indicating that the value of the farm was to be removed from the partnership accounts. The son had received and read these accounts, he did not timeously raise the issue that the farm had been wrongly removed from them, and there was evidence of conversations which reflected his acceptance that the farmland was owned by his parents.

The court concluded that the farm was not an asset of the new partnership, and that the son had always known that.

Wood v Priestley and Russell [2016] EWHC 2986 (Ch)

Wood was a licensed insolvency practitioner and former salaried partner in a partnership of which Priestley and Russell were the managing partners. Wood and White, who was another salaried partner, were appointed joint administrators and then liquidators of a company. Subsequently, new liquidators were appointed and claimed that Wood and White had acted in breach of fiduciary duty by causing the company to pay an improper referral fee to a firm of accountants, and had either deliberately and/or dishonestly drew remuneration to which they were not entitled from the company's assets or negligently drawn fees in excess of their proper entitlement. Wood and White denied the allegations. The partnership had two professional indemnity policies which were potentially relevant but the cover under one was exceeded. The insurers under the second policy accepted liability for funding White's defence but not for Wood. Wood left the partnership and reached a settlement agreement with the other partners. He subsequently asserted that they were liable to fund his defence in the claim by the liquidators.

The court noted that there was no dispute that Wood's appointment as administrator and liquidator meant that although he remained an employee of the partnership, the appointment was personal to him and he owed duties to the body of creditors which were independent of his duty to his employer (*Casson Beckman v Papi* [1991] BCLC 299). Therefore, if excessive fees had been taken from the company's assets, it was ultimately the responsibility of the joint officeholders, Wood and White.

Clause 11 of the partnership agreement provided that the partners undertook to pay and discharge all liabilities of the partners including proceedings in respect of negligence against the partnership, to indemnify the salaried partner against all such liabilities, and to indemnify him against all claims 'in respect of the same'.

The court held that the reference to 'of the same' referred back to the liabilities referred to in the first two elements and thus clarified that the indemnity covered not only the liabilities of the partner, but also all claims in respect of those liabilities. It was intended to provide an indemnity against claims made against the partnership for which he might be liable because, although he was an employee, as a salaried partner there was a risk that he might be held out as a partner and thus become liable under s14 of the Partnership Act 1890. It was not intended to protect him against claims made against him personally.

The court further held that Clause 5.1 of the settlement agreement with Wood made it clear that Clause 11 continued to apply. Although Clause 5.2 stated that the partnership was obliged to take all reasonable steps to ensure that, to the extent it had relevant insurance cover, any financial liabilities incurred by Wood in respect of any claims (including, inter alia, claims arising from the administration and liquidation of the company) were the responsibility of the insurer, this did not require the partnership to meet Wood's financial liabilities relating to claims. The court also noted that, although it was not asked to decide the point, it was probably inconsistent with Clause 5.2 for the partnership to require Wood himself to take up the question of insurance with the insurer.

The court did not find it necessary to decide whether the personal nature of the appointments was inconsistent with a trust, although it was provisionally inclined to the view that an office holder could hold the fees for his appointment upon trust for his employer. However, Wood's right as a trustee to an indemnity out of any such trust fund would not be automatic, and would depend on the findings made in the claim made by the new liquidators. In any event, the court's provisional view was that a claim for such an indemnity would be excluded by Clause 12.2 of the settlement agreement, which provided that the agreement was in full and final settlement of all claims against the partnership.

***Harris v Microfusion 2003-2 LLP & Others, Future Films (Management Services) Limited and Future Films (Partnership Services) Limited* [2016] EWCA Civ 1212**

Harris was a member of the Microfusion 2003-2 LLP. He sought to bring a derivative claim for the benefit of the LLP against Future Films (Management Services) Limited and Future Films (Partnership Services) Limited (collectively 'Future Films') in respect of breaches of duty committed by them in their capacity as designated members of the LLP. The LLP deed provided that any decision by the members required the prior written consent of the designated members, and thus the decision to bring litigation required the consent of Future Films. Since they did not consent to the action against themselves, permission to bring a derivative action was sought.

It was common ground that the provisions for a statutory derivative remedy in the Companies Act 2006 had not been applied to LLPs but that the common law derivative remedy had survived the enactment of the statutory remedy (*Universal Project Management Services Ltd v Fort Gillicker Ltd & others* [2013] Ch 551). The common law was that only the company or LLP against whom a wrong was committed could bring proceedings in respect of that wrong (the rule in *Foss v Harbottle* (1843) 2 Hare 461) and that an individual member could not do so unless one of four exceptions to *Foss*, as summarised in *Daniels v Daniels* [1978] 1 WLR 406, applied. The allegation in this case was that the fourth exception applied, namely that there was fraud. The High Court, after considering

Abouraya v Sigmund [2014] EWHC 277 (Ch) in which it was held that the alleged wrongdoing must have resulted in a loss to the company (or LLP) and that either the alleged wrongdoers should have personally gained from their wrongdoing or that what was alleged amounted to fraud in the sense of deliberate and dishonest breaches of duty.

Three breaches of duty were alleged in this case. The High Court granted permission to proceed with the second and third claims on the ground that they alleged fraud or deliberate and dishonest breach of duty, but refused permission to proceed with the first because it did not.

Wood stated that he had not intended to convey to the High Court, and therefore did not submit to the Court of Appeal, that the second and third claims alleged deliberate and dishonest breach of duty. Instead, he argued that the fraud exception was wider and could apply where the allegation was of breach of fiduciary duty and/or an abuse or misuse of power. The Court of Appeal noted that the court in *Daniels* had fully reviewed the cases and concluded that the fraud exception was a restricted exception to the rule in *Foss v Harbottle*, and it held that the extent of the exception was correctly stated in *Abouraya*. Since Wood accepted that there had been no personal benefit to Future Films in relation to the second and third claims, the Court of Appeal concluded that the High Court should therefore not have given permission to proceed in respect of them.

Wood also argued that although the first claim did not involve an allegation of deliberate and dishonesty, it did involve a benefit to Future Films and therefore the fourth exception to *Foss* applied. He alleged in this case were that a member of the LLP was also a director of Future Films, and the beneficial owner of the group of companies of which they were members, and a director of another company to which Future Films paid £3.39 million for general administrative services, but had not disclosed this potential conflict of interest. However, the Court of Appeal held that these allegations were not sufficient to satisfy the requirement that the wrongdoers had received a 'benefit' from their wrongdoing, and upheld the High Court's ruling that permission to proceed with the first claim should not be given.

Elspeth Berry
Reader in Law, Nottingham Law School, Nottingham Trent University

APP Newsletter Issue 46
May 2017